

**REMARKS**

**I. Restriction Requirement**

In the Office Action, the Examiner requires restriction to one of the following groups of claims:

Group I - Claims 72-89, drawn to a cosmetic composition;

Group II - Claim 90, drawn to a cosmetic assembly; and

Group III - Claims 91, drawn to a non therapeutic cosmetic process.

See Office Action at 2.

Applicants respectfully traverses the restriction requirement, however, to be fully responsive, Applicants elect, with traverse, the subject matter of Group I, comprising claims 72-89, drawn to a cosmetic composition.

The instant application is a national stage filing under 35 U.S.C. § 371 and thus unity of invention practice applies to the application. The Examiner contends that "Groups I-III do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

. . . [t]he instant composition Claim 72 does not present a contribution over the prior art. Claim 72 lacks novelty step. Claim 72 is anticipated by U.S. Patent 6,506,376 ('376). See col.2, ll 5-17. First component reads on claimed non-silicone based grafted ethylenic polymer and silicone oil reads on claimed fatty phase and the composition has fine particle powder and the combination of polymer, oil and powder result in dispersion. As a result, as currently presented, the instant composition claims does not share special technical feature with the assembly of claim 90 or method of use of claim 91 claim 34, and, as such, unity between the above Groups I-III is broken.

See Office Action at 2.

Applicants respectfully disagree with the Office's analysis of U.S. Patent No. 6,506,376 and the conclusion that the patent anticipates the present invention. Applicant reserves any further response until the issuance of an official action directed towards the patent and the elected subject matter.

Applicants submit that the Examiner's restriction requirement is improper and should be withdrawn.

## **II. Election of Species**

In addition, the Examiner alleges that the application contains claims directed to more than one species of the generic invention. See *id.* at 3. The Examiner asserts that "[t]hese species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1." *Id.*

The species are as follows:

### **(1) Species of "non-silicone-based grafted ethylenic polymer."**

The Examiner states that:

Applicant must elect the "nature." By "nature," it is meant that Applicant must elect the composition of the polymer by specifying each and every monomer in the elected polymer, with no undefined or alternative groups. Applicant must also specify whether the polymer is a copolymer and identify each monomer forming the copolymer and must further specify the disposition of the monomer with respect to one another (graft, block, or alternating). If the elected polymer or copolymer is known by an industry or trade name, then that name (or names) should be identified, in addition to the generic description of the elected polymer.

See Office Action at 3.

The election of species requirement is respectfully traversed. However, to be fully responsive, Applicants provisionally elect, with traverse:

1) The polymer of example 1, as a species of “non-silicone-based grafted ethylenic polymer,” with claims 72-89 reading on the elected species either literally or under the doctrine of equivalents.

As with the restriction requirement discussed above, the Examiner merely asserted that “these species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.” Office Action at 3. However, the Examiner has provided no basis as to how the alleged species lack unity of invention. Moreover, the Examiner acknowledges that claims 72-80, and 83-91 are generic. See *id.* at 4.

Applicants respectfully request that the full scope of the claimed invention continue to be examined in this application without the restriction or election requirement. If the Examiner chooses to maintain the election requirement, Applicants respectfully request the Examiner, if the elected species is found allowable, to continue to examine the full scope of the subject matter to the extent necessary to determine the patentability thereof, that is, extending the search to a reasonable number of the non-elected species according to M.P.E.P. § 803.02 and 35 U.S.C. § 121.

### **III. Conclusion**

In view of the foregoing election and remarks, Applicants respectfully request reconsideration and examination of the claims. Please grant any extensions of time

required to enter this response and charge any additional required fees to Deposit  
Account No. 06-0916.

Respectfully submitted,

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